

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner,)	
)	PCB No. 14-99
v.)	(Pollution Control Facility
)	Siting Appeal)
VILLAGE OF ROUND LAKE PARK, ROUND)	
LAKE PARK VILLAGE BOARD and GROOT)	
INDUSTRIES, INC.,)	
)	
Respondents.)	

GROOT INDUSTRIES, INC.'S MOTION IN LIMINE

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), by and through its attorneys, HINSHAW & CULBERTSON, and for its Motion *in Limine* to Limit Testimony and Exclude Witnesses, states as follows:

BACKGROUND

1. During the discovery period in this matter, Petitioner issued Requests for Production and Interrogatories to all of the Respondents seeking information irrelevant to this proceeding. Respondents objected to Petitioner's discovery requests as overbroad and improper on appeal of a siting decision. On March 20, 2014, the hearing officer issued an order sustaining Respondents' objections, and stating that "the time frame for all discovery requests, including pre-filing, is from the date Mr. Kleszynski was retained by the Village to December 12, 2013, the date Groot was granted siting." Hearing Officer Order at 5 (Mar. 20, 2014) ("Hearing Officer March 20 Order").

2. The hearing officer imposed this limitation on discovery as of the date of Mr. Kleszynski's hiring because of Petitioner's own representations regarding its theory of collusion. Petitioner argued in response to a motion to quash a subpoena to Mr. Kleszynski that his hiring was the basis of Petitioner's fundamental fairness claim. See Hearing Officer March 20 Order at 5 ("It appears that TCH first became aware of its theory of collusion during the siting hearing,

when Mr. Kleszynski was being cross examined. To that end, I find that a reasonable time period to seek pre-filing contacts is the day that Mr. Kleszynski was retained by the Village.").

3. The Hearing Officer's March 20 Order was affirmed in all respects by the PCB.

4. Also during the discovery period, Petitioner issued Requests to Admit to the Village and Village Board, asking them to authenticate 30 sets of meeting minutes from meetings of the Village Board dating as far back as 2008. Notwithstanding the Respondents' belief that all pre-filing contacts are irrelevant to the fundamental fairness of the siting procedures, the Village and Village Board answered Petitioner's Requests to Admit.

5. On April 7, 2014, the hearing officer issued a second order regarding discovery, stating that Petitioner "may pursue discovery regarding entries in the Village Board's minutes that [were] the subject of TCH's request to admit The discovery, however, must only pertain to the waste transfer station that is the subject of the above-captioned appeal." Hearing Officer Order at 5 (April 7, 2014) ("Hearing Officer April 7 Order").

6. The hearing officer issued this second order because Petitioner, in an attempt to avoid the discovery limits properly set by the hearing officer in the March 20 Order, modified its theory of collusion and now claimed that these meeting minutes, and an alleged scheme revealed by the minutes, were the basis of Petitioner's fundamental fairness claim.

7. The PCB affirmed the Hearing Officer's April 7 Order, as well.

8. During depositions, despite the March 20 and April 7 Hearing Officer Orders, Petitioner's counsel introduced a number of exhibits that pre-dated Mr. Kleszynski's hiring and were not the subject of Petitioner's Request to Admit or that were not related to the transfer station at all.

9. During discovery, Groot also issued Interrogatories to Petitioner requesting identification of "all witnesses who will testify at the Hearing for Petitioner, and the subject of

each individual's testimony." Petitioner objected to this Interrogatory, claiming that it was premature. The hearing officer stated in an order dated March 11, 2014 that Groot's Interrogatory was premature "because no responses to discovery requests have been provided."

10. Thereafter, on March 31, 2014, all Respondents filed responses to Petitioner's discovery requests, which the Respondents supplemented on April 25, 2014. Petitioner, however, did not supplement its response to Groot's Interrogatory requesting witness identification until May 9, 2014.

11. On May 9, 2014, the date of the discovery cut-off in this matter, Petitioner submitted a list of 19 potential hearing witnesses as a purported supplement to its earlier Response to Groot's Interrogatories. This Supplemental Response is attached hereto as Exhibit 1.

12. Of the 19 witnesses belatedly identified by Petitioner, two are counsel to parties in this proceeding and only five were deposed during the discovery period. Petitioner conducted depositions of witnesses Wagner, Lucassen, Kenyon, McCue, and Brandsma.

DISCUSSION

13. In an appeal of a siting decision, the PCB must generally confine its review to the record developed by the local siting authority, and may only hear new evidence outside this record if it is relevant to fundamental fairness. *Land & Lakes Co. v. PCB*, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

14. Consistent with this well-settled principle of law on review of a siting decision, Petitioner should be barred from introducing any new evidence that is related to a manifest weight of the evidence review of the siting criteria. The PCB must instead limit its review on the criteria to the record created by the Village Board.

15. In the present proceeding, the only new evidence that may be introduced is that relevant to the fundamental fairness of the procedures used by the siting authority. The only evidence that may arguably be relevant to fundamental fairness¹ has been delineated by the March 20 and April 7 hearing officer orders, as set forth above.

16. The standards for relevance are broader during discovery, because parties are permitted to seek information that is relevant *or* is reasonably calculated to lead to relevant information. 32 Ill. Admin. Code 101.616(a). However, not all discoverable information will ultimately be relevant at the hearing. It follows that if the hearing officer determined – and the PCB affirmed – that evidence outside the parameters delineated by the March 20 and April 7 Hearing Officer Orders was not even discoverable under the broader discovery standards, then information outside these parameters necessarily is not relevant in the hearing itself.

17. Petitioner should further be barred from introducing new evidence regarding fundamental fairness unless it is either 1) dated between June 20, 2013 (the date of Mr. Kleszynski's hiring) and December 12, 2013 *and* related to the transfer station, or 2) related to the meeting minutes attached to Petitioner's Request to Admit *and* related to the transfer station. Any new evidence that falls within these limitations must necessarily be evaluated for relevance, as well.

18. Petitioner should specifically be barred from introducing evidence that pre-dates Mr. Kleszynski's hiring and is not related to the meeting minutes at all. Petitioner's counsel attempted to introduce numerous such documents during depositions in this matter and should not be permitted to waste the parties' time with such clearly irrelevant documents during the hearing.

¹ Groot does not, by this Motion, waive any specific objections it may have at hearing to the relevance of any specific evidence offered by Petitioner, nor does it waive its ongoing objection to the relevance of pre-filing evidence.

19. Similarly, Petitioner should be barred from introducing any evidence that pre-dates Mr. Kleszynski's hiring if it does not relate to the meeting minutes and to the transfer station. For example, most of the 30 exhibits attached to Petitioner's Requests to Admit do not relate in any way to the transfer station that is the subject of this appeal. Petitioner should be barred from introducing any of these exhibits.

20. Finally, Petitioner should be barred from introducing witnesses it did not properly disclose during the discovery period. By waiting until the last day of discovery to identify its potential witnesses, most of whom fall outside the scope of discovery in this matter, and two of whom are counsel for parties in this proceeding, Petitioner is attempting to conduct trial by ambush. Such "sharp" practice should not be rewarded in this forum.

21. Because it did not supplement its Interrogatory responses until the date of the close of discovery, Petitioner should at most only be permitted to introduce the witnesses it "identified" by way of conducting their depositions. While Petitioner never actually identified any of its witnesses during the period in which such information could be of use to the other parties, the parties were at least able to gather information from the five witnesses who were deposed. The other 14 witnesses on Petitioner's list should be excluded.²

WHEREFORE, Respondent Groot Industries Inc. respectfully moves that Petitioner be barred from introducing the following evidence:

1. Evidence prior to June 20, 2013 that was not the subject of Petitioner's Requests to Admit;
2. Evidence prior to June 20, 2013 that was the subject of Petitioner's Requests to Admit but does not relate to the transfer station;
3. Evidence after June 20, 2013 that is not related to the transfer station;

² Groot does not, by this Motion, concede that any testimony elicited from these five witnesses is relevant, nor does it waive any potential objections it may have to questions posed by Petitioner to these witnesses.

4. Evidence related to the siting criteria and whether the Village Board's decision was against the manifest weight of the evidence;
5. Witnesses not properly disclosed or deposed by Petitioner during the discovery period.

Dated: May 12, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter
One of Its Attorneys

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AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

The undersigned certifies that on **May 12, 2014**, a copy of the foregoing **Groot**

Industries, Inc.'s Motion in Limine was served upon the following:

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by e-mailing a copy thereof as addressed above.



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner)	
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v.)	No. PCB 2014-099
)	
VILLAGE OF ROUND LAKE PARK,)	(Pollution Control Facility Siting Appeal)
ROUND LAKE PARK VILLAGE BOARD)	
and GROOT INDUSTRIES, INC.,)	
)	
Respondents)	

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

Now comes petitioner, Timber Creek Homes, LLC (“TCH”), by its attorneys, Jeep & Blazer, LLC, and pursuant to the Hearing Officer’s March 11, 2014 Order, hereby submits its Supplemental Answers to the Interrogatories served by respondent Groot Industries, Inc. (“Groot”).

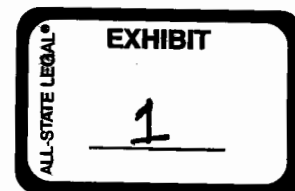
INTERROGATORY NOS. 2-11:

ANSWER: In addition to documents identified in TCH’s initial Answers to Interrogatories, in accordance with Illinois Supreme Court Rule 213(e), see documents identified in response to Interrogatory No. 25 below. All said documents are in Groot’s possession.

INTERROGATORY NO. 24 Please identify the name, current address, and current telephone number of all witnesses who will testify at the Hearing for Petitioner, and the subject of each individual's testimony.

ANSWER: TCH may call one or more of the following individuals, whose contact information is in Respondents’ possession, with respect to the following matters:

- a. That the siting process and procedures employed by the Village Board were fundamentally unfair.



- b. That the merits of the Siting Application were pre-adjudicated by certain members of the Round Lake Park Village Board and Round Lake Park's Village President.
- c. That certain members of the Round Lake Park Village Board, and Round Lake Park's Village President, were biased regarding the Siting Application.

The potential witnesses are:

- a. Lee Brandsma, Groot Industries, Inc.
- b. Trustee Robert P. Cerretti, Sr.
- c. Martin N. Fallon, P.G., CB&I/Shaw Group
- d. Kevin Finn
- e. Former Trustee Pat Graham
- f. Charles Helsten, Hinshaw & Culbertson
- g. Trustee Candace Kenyon
- h. Dale Kleszynski, Associated Property Counselors
- i. Mayor Linda Lucassen
- j. Al Maiden, Rolf C. Campbell & Associates/Manhard Consultants Ltd.
- k. Trustee Jean McCue
- l. Former Trustee Martin Nelson
- m. Former Trustee Kathleen Pender
- n. Glenn Sechen, The Sechen Law Group, PC
- o. Former Trustee Robert Seminary
- p. Former Trustee Kenneth Schnur
- q. Former Trustee John Teubert
- r. Trustee Donna Wagner
- s. Walter Willis, Solid Waste Agency of Lake County

INTERROGATORY NO. 25 Please identify and list any and all documents which will be introduced into evidence at the Hearing, and the purpose and content of each such document.

ANSWER: TCH may utilize any and all documents identified in its Answers to Groot's Interrogatories. TCH may also utilize any and all other documents produced or utilized during the course of discovery to date, including the following:

- a. TCH Deposition Exhibit Numbers 1 through 52.

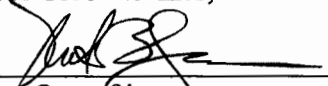
- b. Petitioner's Request To Admit Facts And Genuineness Of Documents.
- c. Respondent Round Lake Park Village Board's Answer To Petitioner Timber Creek Homes, Inc. Request To Admit Facts And Genuineness Of Documents.
- d. Village Of Round Lake Park's Answer To Timber Creek Homes, Inc.'s Request To Admit Facts And Genuineness Of Documents.
- e. Answers To Petitioner's First Set Of Interrogatories To Groot Industries, Inc. and all documents identified therein.
- f. Response To Petitioner's First Request For Production Of Documents From Groot Industries, Inc. and all documents identified therein.
- g. Supplemental Answers To Petitioner's First Set Of Interrogatories To Groot Industries, Inc. and all documents identified therein.
- h. Supplemental Response To Petitioner's First Request For Production Of Documents From Groot Industries, Inc. and all documents identified therein.
- i. Village Of Round Lake Park's Response To Petitioner's First Set Of Interrogatories To Village Of Round Lake Park And Round Lake Park Village Board and all documents identified therein.
- j. Round Lake Park Village Board's Response To Petitioner's First Request For Production Of Documents From Village Of Round Lake Park And Round Lake Park Village Board and all documents identified therein.

- k. Village Of Round Lake Park's First Supplemental Response To Petitioner's First Set Of Interrogatories To Village Of Round Lake Park And Round Lake Park Village Board and all documents identified therein.
- l. Round Lake Park Village Board's First Supplemental Response To Petitioner's First Request For Production Of Documents From Village Of Round Lake Park And Round Lake Park Village Board and all documents identified therein.
- m. Village Of Round Lake Park's Response To Petitioner's First Set Of Interrogatories To Village Of Round Lake Park And Round Lake Park Village Board and all documents identified therein.
- n. Village Of Round Lake Park's Response To Petitioner's First Request For Production Of Documents From Village Of Round Lake Park And Round Lake Park Village Board, dated March 31, 2014, and all documents identified therein.
- o. Village Of Round Lake Park's Response To Interrogatories Pursuant To The Hearing Officer's Order Of April 7, 2014 and all documents identified therein.
- p. Village Of Round Lake Park's Response To Petitioner's Request For Production Of Documents From Village Of Round Lake Park And Round Lake Park Village Board, dated April 25, 2014, and all documents identified therein.
- q. All documents produced by Associated Property Counselors/Dale Kleszynski in response to subpoena *duces tecum*.

r. Index To Record Of Proceedings

All said documents are in Groot's possession. Said documents are in connection with the matters identified in the Answer to Interrogatory 24 above.

Timber Creek Homes, Inc.

By: 
One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of Petitioner's SUPPLEMENTAL ANSWERS TO INTERROGATORIES to be served on the following, via electronic mail transmission, on this 9th day of May, 2014:

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Michael S. Blazer
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AFFIDAVIT OF SERVICE

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COUNTY OF WINNEBAGO)

The undersigned certifies that on **May 12, 2014**, a copy of the foregoing **Notice of Filing**

Groot Industries, Inc.'s Motion in Limine was served upon the following:

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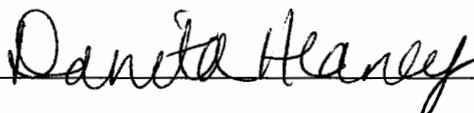
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